

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
SUGARFINA, INC., <i>et al.</i>	)	
	)	Case No. 19-11973 (MFW)
Debtors.	)	Jointly Administered
	)	
	)	Hearing Date September 24, 2019 at 3:00 p.m.
	)	
	)	Related Doc Nos. 7 & 46

**LIMITED OBJECTION OF WASTE MANAGEMENT TO DEBTORS MOTION FOR  
FINAL ORDERS (A) APPROVING THE DEBTORS’ PROPOSED ADEQUATE  
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, (B)  
PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR  
DISCONTINUING SERVICES, (C) APPROVING THE DEBTORS’ PROPOSED  
PROCEDURES FOR RESOLVING ADEQUATE ASSURANCE REQUESTS, AND  
(D) GRANTING RELATED RELIEF (“UTILITY MOTION”)**

Comes now, Waste Management (“WM”), by and through its undersigned counsel and files this Objection to Debtors’ Utility Motion and in furtherance thereof states as follows:

1. On September 7, 2019, Debtors commenced these bankruptcy cases by filing for relief under Chapter 11 of the Bankruptcy Code. On the same date, Debtors filed their Utility Motion. WM is identified on the Debtors’ list of utilities providing services to Debtors.

2. On September 9, 2019, this Court entered its Interim Utility Order (the “Utility Order”). WM is bound by the Utility Order.

3. WM provides waste disposal services to Debtors at numerous locations under multiple service arrangements, purchase orders and/or contracts. Pursuant to the Utility Order, WM is prohibited from altering, refusing or discontinuing service provided Debtors comply with the adequate assurance requirements of the Utility Order.

4. In addition to providing waste disposal services to the Debtors, WM provides collection, waste disposal and landfill services to multiple thousands of customers throughout the country and as a result is frequently listed as a utility provider in numerous bankruptcy cases in Delaware and throughout the country. Notwithstanding the Adequate Assurance requirements imposed on debtors under utility orders in general, an issue that frequently arises and adversely impacts WM is that debtors, more often than not, fail to terminate or send a notice terminating WM's services and/or service contracts in instances when the debtors assume and assign or reject the underlying non-residential real property lease of the premises. Unless WM is notified that its services and/or service contract with the debtors for waste disposal for a specific location has been terminated, it must continue to abide by the utility order entered in the case and may not discontinue providing services. In such instances, WM continues to provide collection services at that location creating a later payment or administrative claim dispute in connection with the services provided by WM to such location.

5. Given the nature of WM's services and typically the location of such services – often multi-tenant locations, WM has no way to know that a Debtor has rejected a lease and vacated the premises or that it assumed and assigned the lease of the premises to a third party.

6. Monitoring a debtor's bankruptcy case for all motions to assume and assign or reject leases is both cumbersome and typically not helpful as the locations serviced by WM is frequently identified differently in the WM service agreement and/or invoice between WM and the debtors than the notice address used between the landlord and the debtor tenant and ultimately set out in the debtors' utility motion.

7. WM requests that in order to avoid such a result that a provision be added to the Final Utility Order – substantially similar to the language set out herein below - requiring Debtors to notify WM if and when Debtors intend to terminate services and/or service contracts

for a specific location and identify the location where services are sought to be terminated; and, provide that should Debtors fail to timely notify WM of the termination of a WM's services and/or service contracts at a specified location, the Debtors shall remain administratively liable for the cost and expense of all services provided by WM until WM receives actual notice that WM's services at a particular location is terminated. To this end, WM requests the following language be added to the Final Utility Order:

Prior to termination of any Waste Management ("WM") services with Debtors, Debtors shall provide notice of such termination in writing to: (i) counsel of record to WM, Monzack Mersky McLaughlin and Browder, P.A., attention: Brian J. McLaughlin, Esq. and Rachel B. Mersky, Esq., 1201 N. Orange Street, Suite 400, Wilmington, DE 19801, [bmclaughlin@monlaw.com](mailto:bmclaughlin@monlaw.com); [rmersky@monlaw.com](mailto:rmersky@monlaw.com) and (ii) Waste Management, attention: Jacqueline E. Hatfield Mills, 1001 Fannin, Suite 4000, Houston, TX, 77002 [JMills@wm.com](mailto:JMills@wm.com). The notice of termination shall include: (a) the date of termination; and (b) the location of the services being terminated as defined in the service agreement and/or invoices between WM and Debtors. In the event Debtors shall fail to provide such notice, Debtors shall remain administratively obligated for the cost and expense of services provided by WM to such location until such time as WM receives actual notice that WM's services at a particular location are being terminated.

8. Absent this requirement, WM remains bound by the Utility Order yet is subject to having its administrative claim for not payment of services challenged solely because Debtors failed to provide notice of termination.

Dated: September 20, 2019

**MONZACK MERSKY MCLAUGHLIN  
AND BROWDER, P.A.**

*/s/ Brian J. McLaughlin*

\_\_\_\_\_  
Brian J. McLaughlin, Esquire (DE #2462)

Rachel B. Mersky, Esquire (DE #2049)

1201 N. Orange Street, Suite 400

Wilmington, DE 19801-1155

Telephone: (302) 656-8162

Facsimile: (302) 656-2769

Email: [bmclaughlin@monlaw.com](mailto:bmclaughlin@monlaw.com)

Email: [rmersky@monlaw.com](mailto:rmersky@monlaw.com)

**ATTORNEYS FOR WASTE MANAGEMENT**